

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

EPHREN W. TAYLOR, II
PLAINTIFF,

VS.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEY
DEFENDANT.

Case: 1:18-cv-02513 (I Deck)
Assigned To : Unassigned
Assign. Date : 10/18/2018
Description: FOIA/Privacy Act

COMPLAINT PURSUANT TO FREEDOM OF INFORMATION ACT

This is an action brought by plaintiff Ephren W. Taylor, II, proceeding pro-se, against the defendant Executive Office for United States Attorney (EOUSA) under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, et seq., as amended, for the disclosure of various records.

THE PARTIES

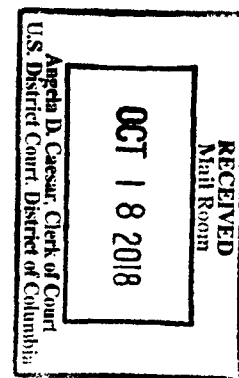
1. Plaintiff Ephren W. Taylor, II, an American Citizen, is a federal prisoner currently in the custody of the Bureau of Prisons under the register number #26896-045. See www.bop.gov inmate locator.
2. Plaintiff is incarcerated at FCI Texarkana located in Texarkana, TX.
3. Defendant Executive Office For United States Attorney, is a component of the Department of Justice ("DOJ"), an agency of the United States.

JURISDICTION

4. This action commences pursuant to the Freedom Of Information Act ("FOIA"), 5 U.S.C. §552, et seq., as amended, for the disclosure of various records belonging to Plaintiff in the custody of the EOUSA.
5. This court has jurisdiction over all the parties and subject matter pursuant to 5. U.S.C. §552(a)(4)(B) and 5 U.S.C. §552a(g)(1)(B).
6. Venue is proper in this district pursuant to 5 U.S.C. §552(a)(4)(B) and 5 U.S.C. § 552a(g)(5).

STATEMENT OF FACTS AND BACKGROUND

7. Plaintiff, on or about October 30, 2017 filed a specific and detailed FOIA Initial Complaint
Pg. 1



Freedom of Information Act request with the U.S. Department of Justice, Executive Office for the United States Attorneys.

8. The request was assigned request number **FOIA-2018-000746**.

9. The request requested certain communications, meeting notes, logs, concerning plea negotiations between Plaintiff's counsel and the U.S. Attorney's Office of Northern Georgia (Atlanta Division).

10. Plaintiff's purpose of the document request was to investigate, and perfect his non-frivolous claims of ineffective assistance of counsel. See Ephren Taylor v. United States of America, Civil Case # 1:16-CV-913-WSD-AJB, (N.D. GA. March 2016).

11. On or about January 4th, 2018, Defendants confirmed receipt of the initial request in writing.

EOUSA WITHHOLDS REQUESTED DOCUMENTS

12. Approximately during the month of July 2018 , the EOUSA declined to disclose the requested documentation from the original FOIA request.

13. The EOUSA office stated that they could not release the records because **"The record does not reflect that you have filed anything with the District Court per the terms of that agreement challenging any or all of that plea agreement."**

14. The EOUSA relied upon information that Plaintiff may have been subject to a valid, knowingly and voluntary plea agreement with a waiver clause of all FOIA rights.

15. The agency also mistakenly relied upon the fact that Plaintiff had not challenged by court filings anything attacking the plea agreement.

16. On July 17th, 2018, Plaintiff appealed to the Office of Information Policy (OIP), concerning the erroneous denial of his FOIA request.

17. Plaintiff, made the OIP office aware that in fact he was actively

challenging the plea agreement via §2255 proceedings. See **FOIA Appeal, Dated July 17th 2018, FOIA 2018-000746.**

18. On August 6th, 2018 the OIP assigned the appeal a case number of **DOJ-AP-2018-007427.**

19. As of October 11th, 2018 the office of OIP has failed to respond to Plaintiff's appeal within 20 days as provided by statute 5 U.S.C. §552(a)(6), thus exhausting Plaintiff's remedies.

VIOLATION OF FOIA

20. Defendant has violated FOIA by improperly withholding records responsive to Plaintiff's FOIA request (EOUSA Request Number: **FOIA-2018-000746** AND OIP Appeal Number **DOJ-AP-2018-007427**).

21. Defendant has erroneously withheld the requested documents based upon erroneous information that Plaintiff's criminal plea agreement and it's FOIA waiver are enforceable.

22. Plaintiff as shown in his OIP Appeal, factually has made a challenge to the knowing and voluntary nature of his plea agreement. See **Ephren Taylor v. United States of America**, Civil Case # 1:16-CV-913-WSD-AJB, (N.D. GA. March 2016).

PLAINTIFF'S PLEA WAIVER UNENFORCEABLE

23. Plaintiff has shown that he has made non-frivolous challenges to the knowing and voluntary of his criminal plea agreement, and due to the involuntary nature of his plea, the waiver is not valid nor enforceable.

24. Defendant more importantly is in violation of this Circuit's holding that FOIA Plea Waivers are essentially unenforceable by way of public policy grounds. See **Price v. United States DOJ Atty**, 865 F.3d 676, 2017 U.S. App. LEXIS 14338, No. 15-5314 (Aug. 4th 2017).

25. Like the Plaintiff in **PRICE**, Plaintiff in this instant proceeding likewise argues that his waiver should not be enforced.

ENFORCEMENT OF PLEA WAIVER PREJUDICES PLAINTIFF

26. Plaintiff as evidenced in his §2255 civil proceedings is attempting to perfect his ineffective of assistance claims against counsel and the potential information withheld by EOUSA is crucial to the support of those claims.

27. Plaintiff has made numerous requests to his former counsel, and the USAO for the Northern District of Georgia to acquire copies of previous plea discussions but has received no response.

28. Plaintiff is utilizing the FOIA process to acquire the documents.

29. Defendant's withholding of the material will significantly prejudice Plaintiff in all current and future legal proceedings.

30. The actions of Defendant are preventing the record in the §2255 proceedings to be fully developed on the IAC claim that Counsel failed to disclose all proffered plea agreements.

31. Plaintiff has sought remedy through the FOIA process to acquire the documentation that will show all proffered and negotiated plea agreements.


32. Plaintiff will not be able to perfect or meet the evidentiary standard without the requested documentation in related civil and criminal cases.

PRAYER FOR RELIEF

Plaintiff requests that this honorable Court:

- A. Declare Defendant's failure to comply with FOIA to be unlawful;
- B. Enjoin Defendant from continuing to withhold the records responsive to Plaintiff's FOIA request and otherwise order Defendant to produce the requested records without further delay.
- C. Enjoin Defendant from enforcing the Plaintiff's plea or plea waiver on public policy grounds in accordance with Price v. United States DOJ Atty.
- D. Enjoin Defendant from enforcing the Plaintiff's plea or plea waiver due to the fact the plea agreement is involuntary and not valid.
- E. Grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E)(i) and 5 U.S.C. §552a(g)(3)(B); and
- F. Grant Plaintiff such other and further relief that the Court deems proper.


Dated: **October 11th , 2018**



Ephren W. Taylor, II
BOP Register # 26896-045
Federal Correction Institution
P.O. BOX 7000
Texarkana, TX 75505

CERTIFICATE OF SERVICE

I certify that under penalty of perjury in accord with 28 U.S.C. 1746 that I placed a true and correct copy of the foregoing complaint in the prison mailbox, properly addressed with prepaid first-class postage attached thereto on the **11th** day of **October**, 2018, and mailed to the Clerk of the Court with electronic service requested.



Ephron W. Taylor, II
BOP Register # 26896-045
Federal Correction Institution
P.O. BOX 7000
Texarkana, TX 75505

EXHIBIT A

FOIA OIP APPEAL

July 17th, 2018

Director, Office Of Information Policy (OIP)
United States Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

RE: Freedom Of Information Act Appeal Request Number : FOIA-2018-000746

Dear Director:

I am writing to appeal the decision regarding withholding of certain records concerning my FOIA request. Specifically, I have sought to obtain records from the US Attorney's Office for the Northern District of Georgia, in relation to an ongoing civil and criminal case. The information and documents requested are centerpoint to active litigation.

Mr. Kevin Krebs assistant director recently made a decision based on erroneous information supplied to him. He specifically stated that : **"The record does not reflect that you have filed anything with the District Court per the terms of that agreement challenging any or all of that plea agreement"**.

Contrary to Mr. Krebs statement there is an ongoing \$2255 motion, that was filed in the District Court that challenges the plea agreement, and it's voluntariness of that plea. I have challenged the plea agreement on several aspects and it's pending a ruling by the district judge.

Relevant Cases

See Ephren Taylor v. United States of America

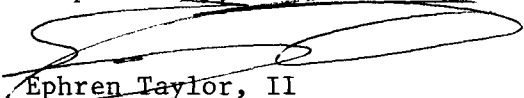
Civil Case # 1:16-CV-913-WSD-AJB

Related Criminal Case# 1:14-CR-217-WSD-AJB

There is also evidence that was submitted during the case that not only does counsel concur the plea is invalid, but the US Attorney's office has not disputed the fact. I have attached for your review a recent motion for a hearing that outlines all the disputed cases in the litigation, and supports my claim that I have not only properly challenged the plea agreement, but that the record is clear that the challenge was made on **March 17th, 2016**.

For these stated reasons I am submitting that the request be re-considered, and the fact that the plea has been challenged properly in district court should be weighed in that decision. Lastly, please confirm if your office will change its position on the initial request so that future litigation on the matter can be averted.

Respectfully,



Ephren Taylor, II
Reg # 26896-045
Federal Correction Institution
PO BOX 7000
Texarkana, TX 75505